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Letter Ruling 83-2: Sale of Corporate Assets: Real Estate, Machinery, Inventory, Motor Vehicles

January 12, 1983

You inquire whether the proposed sale by _____ ("Corporation") of its _____ ("Facility") will be subject to the Massachusetts sales or use tax. The Facility comprises real estate, machinery and equipment, inventory, and cars and trucks.

General Laws Chapter 64H, Section 2 imposes an excise on sales at retail of tangible personal property. "Sale at retail" does not include sales for resale in the regular course of business (G.L. c. 64H, s. 1(13)), but the gross receipts of a vendor from sales of tangible personal property are presumed to be from sales subject to tax except where the vendor takes a resale certificate in good faith from a purchaser who is himself a registered Massachusetts vendor (G.L. c. 64H, s. 8).

Chapter 64H, Section 6(c) and Sales and Use Tax Regulation 830 CMR 16.01, promulgated thereunder, generally exempt from taxation casual and isolated sales of tangible personal property acquired for use or consumption by a seller and not sold in the regular course of business engaged in by such seller. However, with exceptions not here relevant, casual and isolated sales of motor vehicles, trailers, boats and airplanes are subject to the Massachusetts use tax (G.L. c. 64H, s. 6(c); G.L. c. 64I, s. 7(b)).

Based on the foregoing, it is ruled that:

1. The transfer of the real estate will not be subject to the sales or use tax.
2. The transfer of the machinery and equipment will be exempt from the sales and use taxes as a casual and isolated sale.
3. The transfer of the inventory will be exempt from the sales and use taxes if the purchaser registers as a Massachusetts sales tax vendor and presents a resale certificate in connection with the transfer.
4. The transfer of the cars and trucks will be subject to the use tax.

Nothing in this ruling may be construed as a certificate under Section 44 or Section 52 of Chapter 62C that the Corporation has no outstanding Massachusetts tax liability, or as a waiver of the lien provided for in Section 51 of Chapter 62C.

Very truly yours,

/s/Ira A. Jackson

Ira A. Jackson

Commissioner of Revenue

IAJ:JXD:mf

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